

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

\* \* \*

DARBY NEAGLE,

Petitioner,

v.

STATE OF NEVADA, et al.,

Respondents.

Case No. 2:21-cv-00225-KJD-BNW

ORDER

Darby Neagle, a Nevada state prisoner, has filed a 28 U.S.C. § 2254 habeas corpus petition (ECF No. 1). The court has reviewed the petition pursuant to Habeas Rule 4 and directs that it be served on respondents.

A petition for federal habeas corpus should include all claims for relief of which petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive petitions). If petitioner is aware of any claim not included in his petition, he should notify the court of that as soon as possible, perhaps by means of a motion to amend his petition to add the claim.

**IT IS THEREFORE ORDERED** that the Clerk ELECTRONICALLY SERVE the petition (ECF No. 1) on the respondents.

**IT IS FURTHER ORDERED** that the Clerk add Aaron D. Ford, Nevada Attorney General, as counsel for respondents and provide respondents an electronic copy of all

1 items previously filed in this case by regenerating the Notice of Electronic Filing to the  
2 office of the AG only.

3 **IT IS FURTHER ORDERED** that respondents file a response to the petition,  
4 including potentially by motion to dismiss, within **90 days** of service of the petition, with  
5 any requests for relief by petitioner by motion otherwise being subject to the normal  
6 briefing schedule under the local rules. Any response filed is to comply with the  
7 remaining provisions below, which are entered pursuant to Habeas Rule 5.

8 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents  
9 in this case be raised together in a single consolidated motion to dismiss. In other  
10 words, the court does not wish to address any procedural defenses raised herein either  
11 in seriatum fashion in multiple successive motions to dismiss or embedded in the  
12 answer. Procedural defenses omitted from such motion to dismiss will be subject to  
13 potential waiver. Respondents should not file a response in this case that consolidates  
14 their procedural defenses, if any, with their response on the merits, except pursuant to  
15 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If  
16 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they will  
17 do so within the single motion to dismiss not in the answer; and (b) they will specifically  
18 direct their argument to the standard for dismissal under § 2254(b)(2) set forth in  
19 *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural  
20 defenses, including exhaustion, should be included with the merits in an answer. All  
21 procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

22 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents  
23 specifically cite to and address the applicable state court written decision and state  
24 court record materials, if any, regarding each claim within the response as to that claim.

25 **IT IS FURTHER ORDERED** that petitioner has **45 days** from service of the  
26 answer, motion to dismiss, or other response to file a reply or opposition, with any other  
27 requests for relief by respondents by motion otherwise being subject to the normal  
28 briefing schedule under the local rules.

1           **IT IS FURTHER ORDERED** that any additional state court record exhibits filed  
2 herein by either petitioner or respondents be filed with a separate index of exhibits  
3 identifying the exhibits by number. The parties will identify filed CM/ECF attachments  
4 by the number or numbers of the exhibits in the attachment.

5           **IT IS FURTHER ORDERED** that, at this time, the parties send courtesy copies of  
6 **any responsive pleading or motion and all INDICES OF EXHIBITS ONLY** to the  
7 Reno Division of this court. Courtesy copies shall be mailed to the Clerk of Court, 400  
8 S. Virginia St., Reno, NV, 89501, and directed to the attention of "Staff Attorney" on the  
9 outside of the mailing address label. **No further courtesy copies are required unless**  
10 **and until requested by the court.**

11  
12           DATED: 6 April 2021.



---

KENT J. DAWSON  
UNITED STATES DISTRICT JUDGE